

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

GILDARDO MAGANA,)
Petitioner,)
v.) Civil Action
ROBERT McFADDEN, Warden,) No. 04-3409-CV-S-RED-H
Respondent.)

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition and has submitted to the undersigned a report and recommendation that the petition be dismissed without prejudice.

Petitioner has filed exceptions to the report and recommendation of the United States magistrate judge, in which he continues to assert that the Bureau of Prisons' interpretation of 18 U.S.C. § 3624(b) is erroneous. Specifically, he asserts that the phrase "term of imprisonment" should be interpreted to mean the sentence imposed, rather than the time served. Petitioner continues to rely on the reasoning and analysis in *White v. Scibana*, 314 F.Supp.2d 834, 837 (W.D. Wis. 2004) ("White I"). That case, however, was reversed in *White v. Scibana*, 390 F.3d 997 (7th

Cir. 2004) (*White II*). All other circuits who have addressed the issue have upheld the interpretation of the Bureau of Prisons. This includes the Eighth Circuit, which is spoken in two unpublished opinions, *James v. Outlaw* 126 Fed.Appx. 758, 759, 2005 WL 677769 (8th Cir. 2005); *United States v. Wittman*, 2005 WL 1663134 (8th Cir. July 18, 2005). Petitioner's exceptions must therefore be overruled. It is

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis; it is further

ORDERED, ADJUDGED and DECREED that the petition filed herein be dismissed without prejudice.

/s/ Richard E. Dorr

RICHARD E. DORR

UNITED STATES DISTRICT JUDGE

Date: April 5, 2006